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 ROB GRABOW and PARADISE
 VALLEY PICTURES LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ROB GRABOW, an individual;
 PARADISE VALLEY PICTURES
 LLC, a Montana limited liability
 company,

Plaintiffs,

vs.

NETFLIX, INC., a Delaware
 corporation, LEBRON JAMES, an
 individual; SPRINGHILL
 ENTERTAINMENT LLC, a Delaware
 limited liability company; CHERNIN
 ENTERTAINMENT, LLC, a Delaware
 limited liability company; WISE
 ENTERTAINMENT, INC. a California
 corporation; LAKE ELLYN
 ENTERTAINMENT, INC., a California
 corporation; STERLIN HARJO, an
 individual; SYDNEY FREELAND, an
 individual; BRIT HENSEL, an
 individual; and DOES 1-20, inclusive,

Defendants.

Case No. 2:24-cv-09822-FLA-PDx

**DECLARATION OF DAVID R.
 GINSBURG IN SUPPORT OF
 PLAINTIFFS ROB GRABOW AND
 PARADISE VALLEY PICTURES
 LLC'S OPPOSITION TO
 DEFENDANTS' MOTION FOR
 LEAVE TO FILE EARLY
 SUMMARY JUDGMENT MOTION
 AND TO BIFURCATE DISCOVERY
 ON PRIOR INDEPENDENT
 CREATION DEFENSE**

*[Opposition; and Declarations of
 Plaintiff Rob Grabow and Devin A.
 McRae filed and served concurrently
 herewith]*

Date: April 4, 2025
 Time: 1:30 p.m.
 Crtrm.: 6B

Judge: *Fernando L. Aenlle-Rocha*

Trial Date: None Set

DECLARATION OF DAVID R. GINSBURG

I, David R. Ginsburg, declare and state as follows:

1. I make this declaration in support of Plaintiffs Rob Grabow and Paradise Valley Pictures LLC's ("Plaintiffs") Opposition to Defendants Netflix, Inc., Chernin Entertainment, LLC, Wise Entertainment, Inc., Lake Ellyn Entertainment, Inc., Springhill Entertainment LLC, LeBron James, Sterlin Harjo, and Sydney Freeland's (collectively, the "Netflix Defendants") Motion for Leave to File Early Summary Judgment Motion and to Bifurcate Discovery on Prior Independent Creation Defense (the "Motion") in the above captioned case. The following facts are of my own personal knowledge and if called as a witness I could and would competently testify as to the truthfulness thereof.

2. My qualifications to render an expert opinion in this case are set forth in my Curriculum Vitae, attached as **Exhibit 1** hereto. In summary, I served as the founding Executive Director of the UCLA School of Law's Entertainment and Media Law and Policy Program (now the Ziffren Institute for Media, Entertainment, Technology and Sports Law) and as a Lecturer in Law, where, from 2005 to 2015 I taught entertainment law and a seminar on entertainment law research and writing. I also taught a class dedicated to substantial similarity analysis between films to scripts and scripts to film. From 1986 to 2002 I was a full-time creative producer and senior managerial corporate executive with creative and supervisory functions in both the television and motion picture industries. From 1977 to 1986, I practiced transactional entertainment law exclusively, and I was a founding partner of the Entertainment Department at the law firm of Sidley & Austin (now known as Sidley Austin LLP), during which practice I also served concurrently as an appointed Judge Pro-Tem of the Beverly Hills Municipal Court. As part of my client work in private practice, I represented one of the major carriers of producer's error and omissions policies, in which capacity I was called upon repeatedly to assess and compare written and produced materials for possible claims of copyright infringement, defamation, and

1 invasions of privacy and the right of publicity, among other potential liabilities. In
2 1986, I became a full-time producer and senior managerial and production executive.
3 As such, it was frequently part of my professional responsibilities to analyze
4 screenplays and other written and oral submissions with respect to their general
5 content and their separate elements, including (as applicable and appropriate, but
6 without necessarily by way of limitation) theme, plot, story, character, dialogue,
7 written and cinematic technique, potential similarity to prior or contemporaneous art,
8 and whether any of the foregoing were protected, concrete expression (as opposed to
9 mere abstract ideas or other species of unprotected content). That approach typically
10 included a careful review and comparison of two or more works in various stages and
11 versions (including any relevant prior art), and an examination of the foregoing
12 elements therein, if and to the extent applicable. Finally, I have lectured on the history
13 of reality television, and the development and state of the law of substantial similarity
14 applied to it, at the Los Angeles Copyright Society, at the UCLA School of Law, and
15 at the USC Gould School of Law.

16 3. I have been retained as an expert to conduct substantial similarity
17 analyses in more than 20 copyright cases dating back to 2003.

18 4. I was retained by Early Sullivan Wright Gizer & McRae LLP to provide
19 expert consultation in the above captioned case, specifically to conduct a preliminary
20 substantial similarity analysis between **Plaintiffs' script for *The Gift of the Game***
21 **and the *Rez Ball* film** which was released for streaming on Netflix on or about
22 September 27, 2024.

23 5. I have read the Motion and immediately noted that it is based on the
24 erroneous premise that this case hinges on the similarities (or lack thereof) between a
25 **production script for *Rez Bill* and *The Gift of the Game* script**. On the contrary, the
26 substantial similarity analysis in this case is based upon **the final *Rez Ball* film**
27 **released by Netflix on September 27, 2024, and Plaintiffs' script for *The Gift of the***
28 ***Game*.**

1 6. I was provided with a copy of an April 2023 production script for *Rez*
2 *Ball* (the “Production Script”) which I understand counsel for the Netflix Defendants
3 informally produced to Plaintiffs’ counsel herein subject to Plaintiffs’ and their
4 counsel’s and experts’ agreement to maintain its confidentiality. As a result, I will not
5 discuss the Production Script in any detail herein. However, I did thoroughly review,
6 analyze and compare the Production Script for *Rez Ball* with the *Rez Ball* film, and
7 *The Gift of the Game* script. Through this review and comparison, I identified
8 numerous instances of verbal content and scene disparities that were in the *Rez Ball*
9 film that were not in the Production Script. My prior experience led me to observe
10 that the differences that are by definition not in the Production Script could have been
11 introduced and edited into the *Rez Ball* film in the period of time between when
12 Grabow shared his script for *The Gift of the Game* with Defendant Hensel and the
13 time the *Rez Ball* film was released; put another way, it would have been possible for
14 the defendants to have implemented elements and concepts from *The Gift of the Game*
15 script into the *Rez Ball* film in the post-production process including but not limited
16 to by way of voiceovers, narration, radio programming, live game announcements,
17 editing, and additional photography in a matter of weeks.

18 7. The changes (and the timing of those changes) between the Production
19 Script and the *Rez Ball* film would be highly relevant to my substantial similarity
20 analysis. Therefore, I provided my input to Plaintiffs’ counsel on the categories of
21 documents and information to be included in an initial round of written discovery to
22 all defendants geared to undercover this information and the timing of these changes.
23 I also believe that the editor of the *Rez Ball* film, Jessica Baclesse, would likely have
24 critical information on how and when these changes came to be and were ultimately
25 implemented into the final film.

26 8. Even if the Production Script, if proven authentic, establishes that many
27 of the similarities between the *Rez Ball* film and *The Gift of the Game* script were a
28 product of independent creation, that would not be dispositive of substantial similarity

1 or infringement by itself; any shared elements not shown to be of independent
2 creation, must still be analyzed, vetted through discovery and weighed in the
3 substantial similarity analysis, including whether they resulted from copying *as a*
4 *matter of fact*. It is as if the defendants purport that by submitting a document
5 ostensibly prepared in April 2023, all requirements of disclosure and proof legally
6 sufficient to disprove substantial similarity have been satisfied, when in fact those
7 very elements could have been added much later.

8 I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct. Executed on this 12th day of March,
10 2025, at Santa Barbara, California.

Signed by:



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David R. Ginsburg